

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHO  
EASTERN DIVISION

UNITED STATES OF AMERICA, ) Case No. 5:13cr219  
                               )  
Plaintiff,                 ) Judge Christopher A. Boyko  
                               )  
vs.                         ) REPORT AND RECOMMENDATION  
                               ) OF MAGISTRATE JUDGE  
JOHN MALBIN,             )  
                               )  
Defendant.                 ) Magistrate Judge Greg White  
                               )

Pursuant to General Order 99-49, this matter was been referred to the undersigned United States Magistrate Judge for the purpose of receiving, after consent, the Defendant's plea of guilty. The following, along with the transcript or other record of the proceedings submitted herewith, constitutes this Court's Report and Recommendation concerning the Defendant's plea of guilty:

1. On June 4, 2013, the Defendant, accompanied by counsel, proffered a plea of guilty;
2. The Defendant was examined as to his competency to participate in a plea proceeding and was found to be competent;
3. The Defendant acknowledged understanding the nature of the charge(s) contained in the information and the maximum possible sentence consequent thereto;
4. The Defendant was advised of his rights to tender a plea of not guilty or stand upon such a plea previously entered, to trial, to representation by counsel, including appointed counsel, at all stages of the proceedings, to confront and cross-examine adverse witnesses, to present witnesses and to compel their presence, to stand upon or waive the privilege against self-incrimination, and acknowledged understanding that if a plea of guilty was accepted each of those rights would be waived;
5. The Defendant was advised that the government would have the right, in a prosecution for perjury, to use any statement he makes under oath;
6. The Defendant and counsel informed the Court of the plea agreement between the parties, and the Defendant advised that, aside from such agreement as described and submitted to the Court, no other commitments or promises have been made by anyone, and no other agreements, written or unwritten, have been made;

7. The Defendant was advised that the terms of the plea agreement retaining only a limited right to appeal or collaterally attack his conviction(s) and sentence(s) will be binding;
8. The parties provided the undersigned with sufficient information about the charged offense(s) and the Defendant's conduct to establish a factual basis for the plea; and,
9. The undersigned questioned the Defendant under oath about the knowing, intelligent, and voluntary nature of the plea of guilty, and finds that the Defendant's plea was offered knowingly, intelligently, and voluntarily.

In light of the foregoing and the record submitted herewith, the undersigned finds that all requirements imposed by the United States Constitution and Fed. R. Crim. P. 11 have been satisfied. Therefore, the undersigned recommends that the plea of guilty be accepted and a finding of guilty be entered by the Court.

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*s/Greg White*  
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Greg White  
United States Magistrate Judge

Date: June 4, 2013

*ANY OBJECTIONS* to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days after being served with a copy of this Report and Recommendation. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).